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8 Attorney for Defendant Brachfeld & Associates  
9 P.C., Erica L. Brachfeld an individual

FILED

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RICHARD W. WIEKING *TSM*  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.J.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

13 SUSAN RAE OWENS

14 Plaintiff, CASE NO. C07 04400 PVT

15 v. ANSWER TO COMPLAINT

16 ERICA L. BRACHFELD, A  
17 PROFESSIONAL CORPORATION,  
18 D/B/A BRACHFELD & ASSOCIATES,  
19 P.C., D/B/A LAW OFFICES OF  
20 BRACHFELD & ASSOCIATES, P.C., a  
California corporation, and ERICA LYNN  
BRACHFELD, individually and in her  
official capacity,

Defendants.

22  
23 COMES NOW Defendant(s) BRACHFELD & ASSOCIATES, ERICA L. BRACHFELD  
24 (collectively and henceforth known as Defendants) whom now answer as one the allegations and  
25 unverified complaint of SUSAN RAE OWENS (herein known as plaintiff) as follows:  
26  
27 ///

## GENERAL DENIAL

Answering in unison the defendants deny each and every, all and individually, generally and specifically the allegations in the plaintiff's complaint, and each and every part thereof, deny that the plaintiff has been injured or damaged in any sum or manner whatsoever as a result of the acts or omissions of the defendants. Further, the defendants deny the plaintiff is entitled to any further relief whatsoever from the answering defendants.

## AFFIRMATIVE DEFENSES

## **FIRST AFFIRMATIVE DEFENSE**

1. The Plaintiff is attempting to benefit from its wrongdoing. Plaintiff entered into a written

Contract and did not comply with the terms and conditions of said contract and became past due on the account. Defendants were retained to collect on this debt according to the provisions of the Rosenthal Fair Debt Collection Practices. However, Plaintiff failed to payoff the debt and now seeks benefit from its wrongdoing. Plaintiff should be denied all or part of any recovery as against this answering Defendant by the Doctrine of Unclean Hands.

## SECOND AFFIRMATIVE DEFENSE

2. This answering Defendant is informed and believes, and on such information and belief alleges, that plaintiff is barred from any recovery against defendant according to the Doctrine of Laches in that plaintiff has waited an unreasonable amount of time before filing its Complaint resulting in substantial prejudice and detriment to Defendant.

### **THIRD AFFIRMATIVE DEFENSE**

3. These answering defendants state that they at all times herein mentioned acted in good faith.

#### FOURTH AFFIRMATIVE DEFENSE

4. These answering defendants allege that the plaintiff's claims are barred by the doctrine of estoppel, in that the plaintiff by his own conduct and the conduct of his agents or representative, by way of statements and actions throughout out the course of the events and time period alleged in the complaint, did knowingly conceal and misrepresent material fact from the defendants who were actually and permissibly ignorant of the truth, and that plaintiff did intend that the defendants act upon said misrepresentations and that defendant was induced to and did so act.

## **FIFTH AFFIRMATIVE DEFENSE**

5. These answering defendants allege that the plaintiff's complaint fails to state a claim sufficient to constitute a cause of action for which relief can be granted.

## **SIXTH AFFIRMATIVE DEFENSE**

6. These answering defendants allege that they have suffered damage by reason of plaintiff's conduct; that they have the right of offset if any amount of money is owed to plaintiff by way of damage.

## SEVENTH AFFIRMATIVE DEFENSE

7. These answering defendants are informed and believe and thereon allege that the plaintiff proximately caused the damages referred to in the complaint and/or others affiliated in any manner with plaintiff in that at all times relevant herein, plaintiff, failed to exercise for their own protection the proper care and precautions which prudent persons under the same and similar circumstances would have exercised and that if these answering defendants committed any wrongful act at all (which supposition is made for the purpose of their defense without admitting such to be a fact), the aforesaid conduct of plaintiff and/or entities or persons associated in any manner with the plaintiff contributed to the happenings of plaintiff's alleged damages.

## EIGHTH AFFIRMATIVE DEFENSE

8. These answering defendants allege that the plaintiff herein and each and every purported Cause of Action in the Complaint are barred as a result of a failure of consideration.

## NINTH AFFIRMATIVE DEFENSE

9. These answering defendants are informed and believe and thereon allege that the matters complained of were proximately caused, in whole or in part, by the acts or omissions of a third party or parties. Accordingly, the liability of the defendants and responsible parties, named or unnamed, should be apportioned according to their respective degrees of fault or other legal responsibility, and the liability, if any, should be reduced accordingly.

## TENTH AFFIRMATIVE DEFENSE

10. These answering defendants allege that the plaintiff has no Cause of Action to sustain the claims alleged on the Complaint. Any or all damages sought by plaintiff results in the plaintiff receiving more money than they are entitled to, only if they are entitled to any relief.

## ELEVENTH AFFIRMATIVE DEFENSE

11. As a separate, affirmative defense, defendants allege that the alleged actions of defendants were proper and did not violate any provisions of 15 U.S.C. § 1692 *et seq.*

## TWELTH AFFIRMATIVE DEFENSE

12. As a separate, affirmative defense, defendants allege that the alleged actions of defendants were proper and did not violate any provisions of Civil Code § 1788 *et seq.*

### THIRTEENTH AFFIRMATIVE DEFENSE

13. As a separate, affirmative defense, defendant alleges that it acted in good faith in the honest belief that the acts, conduct and communications, if any, of defendants were justified under the circumstances based upon information reasonably available.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

14. As a separate, affirmative defense, defendants allege that any violation of law that may have occurred, which defendant specifically denies, was not intentional and resulted from a bona

1 fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such  
2 error.

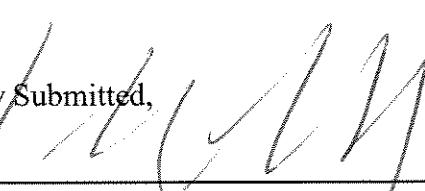
3                   **I.        PRAYER**

4                   **WHEREFORE**, Defendants pray as follows:

5                   1. That the Plaintiff's complaint be dismissed with prejudice.  
6                   2. That the Defendants be awarded attorney's fees and cost of the suit; and  
7                   3. For such other and further relief as the court may see fit to award as just and  
8                   proper.

9  
10 Dated: September 17, 2007

Respectfully Submitted,

11 By: 

12                   Erica L. Brachfeld, Esq. S.B.N 180683

13                   Attorney for Defendants Brachfeld & Associates, et al.

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8 Attorney for Defendants Brachfeld & Associates  
9 P.C., Erica L. Brachfeld and individual

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14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 SUSAN RAE OWENS

17 CASE NO. C07 04400 PVT

18 Plaintiff,

19 vs.

20 ERICA L. BRACHFELD, A  
21 PROFESSIONAL CORPORATION, D/B/A  
22 BRACHFELD & ASSOCIATES, P.C.,  
23 D/B/A LAW OFFICES OF BRACHFELD &  
24 ASSOCIATES, P.C., a California  
corporation, and ERICA LYNN  
BRACHFELD, individually and in her  
official capacity,

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27 PROOF OF SERVICE

28 Defendants.

## **PROOF OF SERVICE**

Mail       Personal Service  Other

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business address is (*specify*): 20300 S. Vermont Ave., Ste.120, Torrance, CA  
90502-1338
3. I mailed delivered a copy of the ANSWER TO COMPLAINT
  - a.  **Mail.** I am employed in the county where the mailing occurred.

a.✉ **Mail.** I am employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope AND

b.  placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

(2) The envelope was addressed and mailed as follows:

(a) Name of person served: Fred W. Schwinn, Esq

## Consumer Law Center, Inc.

(b) Address on envelope: 12 South First Street, Suite 416

San Jose, CA 95113

(c) Date of mailing: September 18, 2007

(d) Place of mailing (city and state): Torrance, CA 90502

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 18, 2007

Aleida Muo

Alexandra L. Hierro